TCG favors such an approach in conjunction with the use of flat-rated ports to recover the non-traffic sensitive portions of tandem switching costs as this approach best meets the ABCs test. Indeed, in its pre-1996 Act Interconnection Agreement with NYNEX, TCG and NYNEX agreed on mutual flat-rated ports, with no usage sensitive component, as a fair and reasonable way to reflect the mutual exchange of local traffic between networks. That flat-rated port methodology also was carried over into its recent Interconnection Agreement with NYNEX arrived at pursuant to the 1996 Act.

TCG would certainly suggest that a flat-rated port be an integral part of the rate structure reforms for tandem switching. Indeed, there should be a careful review to determine if the costs of measuring and billing usage for the portions of the switch that are arguably traffic sensitive merit the development of separate rates for those elements, or if overall consumer welfare can be improved, and overall network costs reduced, by adopting a single non-usage sensitive rate for tandem switching.

Not only does the adoption of a flat-rated charge for tandem switching help bring the rate structure for tandem switching more in line with the way switching costs are incurred, and thus would be "based on costs," but this type of rate

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customers, distort incentives to enter the competitive market, discourage economic efficiency in the design of network, and prove unsustainable under competition." *WUTC v. U S West*, Docket No. UT-941464, et al., Order, Oct. 31, 1995, at 32. Likewise, the Colorado Commission adopted rules that recognized capacity-based costs for ports. See Code of Colorado Regulations, 4 CCR 723-39.

structure actually is a more economically efficient way to reflect "peak" and "off peak" cost characteristics in access rates without the need for usage sensitive charges that vary by time of day. In this context, the Commission's flat-rate port proposal is "Addressable" in that it associates a particular charge with a particular function.

When a carrier purchases a port on a tandem, it is in reality purchasing the ability to place a certain amount of traffic on that switch at its peak period. By developing rates based on capacity, the Commission would in essence be developing rates that are based on the customer's ability to use the switch at the peak. Unlike usage sensitive peak period charges -- which come with numerous contentious questions about how to measure the peak and when the peak occurs -- flat-rated port charges recover costs based on peak characteristics without the need to deal with such thorny issues.

C. LOCAL SWITCHING CHARGES SHOULD BE REFORMED TO REFLECT THE WAY LOCAL SWITCHING COSTS ARE INCURRED. (¶¶71-79)

TCG agrees with the Commission's proposal to separately identify non-traffic sensitive local switching costs and recover them on the basis of a flat-rated charge as this proposal clearly meets the ABCs test. TCG believes that a per-port charge, based on DS1 trunk ports, would be an appropriate rate structure for this purpose.[18]

With respect to the costs that appear to vary with usage, a per-call or per-minute charge (or both) could be developed to recover those amounts. Again, TCG would recommend that the Commission look closely at such traffic sensitive costs to ensure that the costs of measuring and billing the usage are not disproportionate to the amount of the bill. If that is the case, then the Commission should look instead to flat-rated recovery of those costs as well.

D. THE CURRENT RECOVERY OF INTERSTATE LOCAL LOOP COSTS SHOULD BE REFORMED TO ELIMINATE UNECONOMIC BYPASS INCENTIVES AND UNFAIR COST RECOVERY PROCESSES. (¶¶55-67)

Local loop costs are not traffic sensitive -- the cost of the local plant needed to serve a customer will not change whether that customer places few calls or many.[19] Today, under the Separations process, an arbitrary 25% of local loop costs are assigned to the interstate jurisdiction.

Under the FCC's current Switched Access policies, these costs are recovered through two separate charges. First, there is a flat-rate Subscriber Line

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[18]It is worth noting that, to the extent that end office access charges are recovered on a flat-rate basis, there is thus no distinction between "originating" and "terminating" access. Consequently, a flat-rated local switching structure eliminates the potential, if one ever really existed, for the terminating access problems suggested in the Notice. See Notice at ¶271.

[19]Notice at ¶57 and fn. 98.

Charge ("SLC") that is recovered from end users. There is a cap on the amount of such costs that can be recovered from end users.[20] The amount of local loop costs above the cap, together with certain Universal Service contributions, are recovered through a per-minute Carrier Common Line ("CCL") charge imposed on IXCs, and collected on the basis of the number of minutes traversing the local switching office. Under the current system, there is no direct linkage between the recovery of CCL costs, and the manner in which the unrecovered local loop costs are incurred. Therefore, the current structure violates the ABCs test.

Because a substantial portion of local loop costs are recovered under a traffic sensitive rate structure, there is a mismatch between the way costs are incurred and how they are recovered. As the Commission notes, "the current common line rate structure, in which only a portion of common line costs are recovered through flat monthly rates, does not reflect the manner in which loop costs are incurred."[21] This mismatch between rates and costs has consequences: "[t]he Current CCL charge has been uniformly criticized by both

[20]The Subscriber Line Charge (SLC) cap is set at $3.50 per month for residential and single line business users, and $6.00 per month for multi-line business. The Commission recognizes that in the Universal Service proceeding, the Joint Board has recommended that there be no changes to the SLC for single line business and primary residential lines, but does not object to increases in the SLC for second lines to the home and for business lines. Notice at ¶ 64.

[21]Notice at ¶58.

incumbent LECs and IXCs because it discourages efficient use of the network and encourages uneconomic bypass."[22]

TCG generally supports the Commission's proposal to revise the current methods for the recovery of local loop costs. By reducing the per-minute charges associated with carrying interstate long distance charges, the Commission's reforms will reduce the incremental cost of handling long distance calls, opening up the possibility for long distance rate decreases. TCG's specific recommendations are as follows:

The Subscriber Line Charge. Although the current single line residential SLC does not recover all of the interstate costs from the end user, TCG agrees with the Commission's recommendation, which is consistent with the Joint Board's proposal, to leave the existing $3.50 per month cap in place.[23] TCG also agrees with the Commission's recommendation to increase the cap on multi-line business users to full costs; that, too, is a recommendation echoed in the Joint Board's proposal.[24]

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[22]Notice at ¶58. Moreover, the Joint Board recognized that MOU CCL charges are economically inefficient because it imposes a traffic-sensitive charge to a non-traffic sensitive cost. Notice at ¶58, fn.103.

[23]Notice at ¶64.

[24]Notice at ¶65.

TCG would also suggest that the Commission increase the SLC on single line business users, and second residential lines, to full costs.[25] TCG believes that an increase in the recovery of these costs from users is appropriate. TCG does not believe it is appropriate to continue to subsidize business users, whether single line or multi-line, as this methodology results in a structure that is not "addressable" (the charge is not based on the services, functions or facilities for which the customer has the choice of a competitor's services); is not "based on costs" and is not competition enhancing. Therefore TCG believes that the Commission should allow the SLC for all business users to rise to full cost levels.

For the same reasons, TCG does not believe it appropriate to underprice, and thereby subsidize, second residential lines. As the Joint Board recognized, there is a public interest rationale to support a primary network connection, but additional network connections are discretionary and consumers should have appropriate pricing signals to govern their choices.[26]

The Carrier Common Line Charge. The changes advocated by TCG with respect to the Subscriber Line Charge will help reduce the size of the costs that are

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[25]TCG acknowledges that it may be difficult to ascertain where a second residential line exists if, for example, the customer uses different carriers for each of its phone lines. TCG recommends that the Commission consider defining a "second" residential line as any line added to a residence which is already receiving local exchange service, with the "youngest" line being classified as the second line.

[26]In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, issued November 8, 1996.

today recovered through the CCL. The Commission's unassailable proposal to shift Universal Service Fund costs out of the CCL similarly will reduce the costs in the CCL.

Even with these changes, however, there will still be some costs left in today's CCL basket. The Commission opposes the continued use of a usage-based method to recover these costs. As the Commission and the Joint Board recognize, a traffic-sensitive CCL charge structure is economically inefficient because the charge requires ILECs to recover a non-usage sensitive cost in part through a usage-sensitive charge,[27] and therefore, it violates "B" of the ABCs test in that the charges are not cost-based. To best meet the ABCs test, some flat-rated method should be used to recover these costs. The Commission suggests, as one alternative, a per-presubscribed line charge, to be collected from interexchange carriers.[28] TCG supports that alternative, with the following observations.

First, the per-line charge should be collected from all of the lines that the ILEC serves in the state, including business and residential. Since the per-line charge is being used to support residential customers, it is appropriate to spread the recovery of these costs across all of the IXC's customers. The Commission should permit ILECs to vary the per presubscribed line charge by class of customer,

[27]Notice at ¶59; Joint Board Recommended Decision at ¶776.

[28]Notice at ¶60.

provided that primary residential lines should always be subject to the lowest available per presubscribed line charge.

Second, the per presubscribed line charge does not result in the recovery of any amounts from dial around calls, and associates all of the cost recovery with the originating end of the call. While it would be possible to develop a separate, usage-based charge to be assessed on dial around calling, or even extended to all terminating usage, TCG is concerned that such a process will unnecessarily undermine the Commission's overall objective to recover non-usage sensitive costs on a non-usage sensitive basis. Accordingly, TCG is presently of the view that the Commission should collect the remaining local loop costs exclusively from a per presubscribed line charge -- the best method for meeting the ABCs test.

Bulk Billing of Charges Should Not Be Permitted. TCG strongly opposes the use of a bulk billing charge, based on an IXC's percentage share of interstate MOU, as a means to recover local loop costs.[29] Bulk billing of access charges serves as a major disincentive to competitors. If an IXC wishes to switch to a competitive Switched Access provider, for example, it would be forced to pay not only its proportionate share of the ILEC's bulk rate, but also the competitor's rate. Under a bulk-billing approach, an IXC's decision to use a competitor cannot be based solely on competitive considerations such as pricing and quality of service.

[29]Notice at ¶61.

Under a bulk-billing model, IXCs would be disincented from seeking competitive alternatives for Switched Access.

A bulk billing model also does not reflect the way local loop costs are incurred, nor does it reflect the operations of a competitive marketplace. Local loop costs are incurred in proportion to in-service local loops, whereas a bulk billing charge bears no relationship to lines in service and is, therefore, not "addressable." A bulk billing model also represents the exact *opposite* of a competitive market. In a bulk billing situation, the ILEC is guaranteed to receive interstate revenue contributions from IXCs even if the IXC has reduced its use of the ILEC's loops to serve its customers. In a competitive market, a company's revenues are not guaranteed -- it must go out into the market and provide quality services at reasonable prices so that customers want to buy its services. Bulk billing relieves the ILECs -- but not their competitors -- of the obligation to win in the marketplace. It requires IXCs to pay even if the ILEC's services are poor and they have made positive efforts to reduce their dependence on the ILEC. Thus, bulk billing would disincent competition. For these reasons, the Commission should refuse to permit [redacted]

E. THE COMMISSION MUST PROMPTLY COMPLY WITH THE COURT OF APPEALS ORDER AND ELIMINATE THE UNECONOMIC AND ANTI-COMPETITIVE RESIDUAL INTERCONNECTION CHARGE. (¶¶96-122)

In the CompTel decision, the United States Court of Appeals concluded that the Commission had "not justified the current RIC, in which 80% of the allocated costs of tandem switching are recovered from all IXCs -- both tandem switch and dedicated users -- upon the basis of their usage."[30] The Court found that the RIC was originally devised as an interim device to facilitate the transition from the equal charge rule then in effect to a cost-based rate design, and that in that context, the RIC may have been a defensible compromise of two potentially conflicting objectives: encouraging an optimal mix of dedicated and common transport, and protecting smaller IXCs disadvantaged by the physical integration of AT&T and its former operating companies. However, the Court concluded that the circumstances that may have justified the Commission's action in 1992 no longer apply. Upon remand the court instructed the FCC to develop a cost-based alternative to the RIC, or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable.[31]

In its Notice, the Commission acknowledges its obligations under the CompTel order. The Commission proposes four options to deal with the RIC:

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[30]Comptel, 87 F.3d at 532.

[31]Id. at 532.

(1) *Free Market Approach:* This is an ILEC proposal to allow the ILECs to dictate rates through significant and immediate pricing flexibility. Ameritech proposes a three- to five-year phase out, while NYNEX does not propose any end date. The ILECs want to deaverage rates, consolidate price cap baskets, offer contract arrangements, and set access rates based on end-user customer class distinctions.

(2) *Regulatory Approach*: Under this approach, the Commission would seek to quantify and correct each identifiable cost misallocation that contributes to the ILEC. Once the costs are identified, the Commission proposes that they could be (a) left in the RIC subject to market pressures; (b) reassigned to the appropriate access service; (c) recovered in a competitively neutral manner, or (d) removed from the regulated books of account.[32]

(3) *Combination Approach:* The FCC "tentatively concludes" that the best option is to combine alternatives one and two. Under this approach, it would reassign costs that can be clearly identified to the proper places and phase out the remainder of the RIC through market-based or regulatory processes.

(4) *Phase Out Approach:* The last alternative is to adopt a timetable to systematically eliminate the RIC, without reallocating any of its costs.

TCG generally supports the Commission's conclusion that it should use a combination approach. The Commission identifies a number of different potential

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[32]Notice ¶ 116.

sources of misallocations of costs into the RIC category. For example, it suggests that, in addition to tandem switching costs, the RIC contains costs for SS7, for multiplexing, for under-recovered transport services, and other items.[33] TCG agrees that re-allocating the "obvious" misallocated costs, and recovering them from the users who benefit, is a long-overdue and worthwhile undertaking.[34] Focusing first on the preliminary list of misallocated costs and appropriately reallocating those costs will provide the most effective catalyst to promote local telecommunications competition.

But whether the items mentioned in the Commission's Notice represent a complete cataloging of these misallocations is open to question. The preliminary list of categories in the Notice were identified by USTA in ex parte filings to the Commission.[35] While USTA has an obvious incentive to identify misallocations that work to their disadvantage, there can be no assurance that they will have identified misallocations that work to the ILECs' advantage. In the absence of a disinterested and independent review of the costs that are in the RIC, the Commission cannot assume that it has a complete understanding of the costs that are in the RIC.

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[33]Notice at ¶¶ 102-107.

[34]This revision would comply with the ABCs test by addressing the cost-based rate to the appropriate element, thereby enhancing competition.

[35]Letter from Frank McKennedy, Director, Legal and Regulatory Affairs, USTA, to James Schlichting, Chief, Competitive Pricing Division, October 10, 1996.

TCG believes that there is no realistic alternative to undertaking a reasonably detailed review of the costs that are today assigned to Switched Access by Separations. The result of this process would be to assign all residual costs to competitively *addressable* rate elements, meeting "A" of the ABCs test. TCG would suggest that the Commission require, as a first step, that the ILECs produce for public review a complete report of the costs that are currently included in the Switched Access category, and what proportion, and type, of costs are residually assigned to the RIC. Such an analysis must be performed from scratch since, under price caps, there is no longer a direct linkage between rates and costs for price cap ILECs. Until that is done, the FCC cannot assume that there is any particular relationship between costs and rates in the Switched Access category. Also, until that analysis has been completed, and the nature and type of costs currently assigned can be identified, it will not be possible to identify whether the RIC contains truly "lost" costs, or rather costs that have "conveniently" found their way to the only Switched Access rate element that is largely immune from competition.

Until that review has been completed, it will not be possible for the Commission to identify what costs, if any, should "remain" in the RIC after misallocated costs are corrected. Once that review has been completed, then the Commission and parties can intelligently discuss the proper way to recover any "unrecovered" costs. The Commission should not repeat the mistake of the original RIC, and seek to recover those costs in a manner that is largely immune because it does not relate to the nature of the costs that are involved, violating "B" of the ABCs. Instead, TCG would recommend that any residual amounts be recovered through a broadly based and uniform surcharge on all the rate elements that are subject to competition (i.e. Transport and Tandem). For example, if Local Transport costs are all that remain in the RIC, then the surcharge should be applied to all Local Transport elements.

V. EFFECTIVE COMPETITION CAN TAKE HOLD ONLY IF THE COMMISSION FIRST ALLOWS TIME TO MEASURE THE CONSEQUENCES OF ANY SWITCHED ACCESS RESTRUCTURE PRIOR TO IMPLEMENTING PRICE CAP DEREGULATION. (¶¶140-240)

A. THE COMMISSION'S PAST SUCCESS IN USING A MEASURED, CAUTIOUS APPROACH TO DEREGULATION SHOULD BE FOLLOWED IN IMPLEMENTING ANY DEREGULATION OF PRICE CAP CARRIERS.

It has been TCG's experience that a market-based approach represents the best method for improving the quality and lowering the prices of telecommunications services. A market-based approach, for example, has resulted in the prices of Special Access services dropping substantially, and the quality, variety and timeliness of Special Access services improving dramatically over the past ten years. Significantly, these consumer benefits were achieved with little or no regulatory intervention -- such intervention was not contemplated until effective competition took hold. This methodology also worked successfully in the long-distance market where the Commission did not begin to liberalize its regulation of AT&T until competition was established.

Indeed, the Commission recognizes that gradual, incremental deregulation of the price-cap ILECs is beneficial. As the Commission acknowledges in its Notice, removing regulatory restrictions from interstate access services that are provided by price cap carriers "is consistent with prior decisions in which the FCC *gradually removed* AT&T's services from price cap regulation."[36] Significantly, the very first order implementing any form of Title II deregulation of the dominant provider of long distance services, AT&T, was released nine years after the Modification of Final Judgment issued by the DOJ.[37] Throughout this time frame, the Commission continually reviewed the competitiveness of the long distance market, but declined to deregulate the monopoly provider for several years, arguing that effective long-distance competition had not yet been achieved. In referencing its series of decisions deregulating competitive long distance carriers, the Commission stated "we decided to 'forbear' from exercising full Title II regulation of AT&T's competitors in the long-distance industry, *while retaining our full panoply of regulatory requirements of AT&T.*"[38] These decisions were based upon a finding

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[36]Notice at ¶150 (emphasis added) (footnote omitted).

[37]Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 (1991).

[38]Id. at 5881 (emphasis added).

that AT&T possessed substantial market power in the provision of transmission services and that its competitors did not.

Moreover, the Commission chose to carefully scrutinize the deregulation of competitive long distance providers and adopted a regulatory regime that was both gradual and incremental, spanning a period of six years.[39] In its Competitive Carrier proceeding, the Commission pursued a careful, "step-by-step approach through which we have gained experience with selectively lessening regulatory burdens"[40] in gradually deregulating various types of interexchange carriers. In the First Report and Order, for example, the Commission classified carriers as dominant or non-dominant depending on whether they possessed market power, and decided that specialized carriers such as MCI lacked market power and

[39] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), *recon. denied,* 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 46791 (1983); Third Report and Order, 48 Fed. Reg. 46791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 49 Fed. Reg. 11856 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *reviewed and remanded sub nom.,* MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (Competitive Carrier).

[40] 98 FCC 2d at 1192.

therefore merited reduced or streamlined regulations.[41] In the Second Report and Order, issued two years later, the Commission adopted a forbearance regulatory policy for carriers that lacked any market power, and it applied that policy to resellers.[42]

Following that action, the Commission continued to scrutinize the market power of various types of carriers, and, in the Fourth Report and Order, it extended its regulatory forbearance policy to additional carriers.[43] The Commission reasoned that:

> [w]e have had three years of experience with treating specialized common carriers as non-dominant. There is no evidence that it is in the public interest for us to continue receiving streamlined tariff . . . filings from certain specialized common carriers to prevent them from charging unjust or unreasonable rates . . .[44]

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[41]It classified resellers and specialized carriers (such as MCI and Sprint) as non-dominant carriers and eligible for streamlined regulation, and thus presumed their rates lawful and allowed them to file tariffs on abbreviated notice. However, it classified AT&T, Western Union and domestic satellite carriers as dominant carriers because they possessed market power, and did not lessen the regulatory requirements pertaining to them.

[42]In the Third Report and Order, the Commission extended its non-dominant/dominant carrier classification policy to Hawaii, Puerto Rico, the U.S. Virgin Islands, and other offshore domestic points.

[43]The Commission classified as non-dominant domestic satellite carriers, the domestic operations of Western Union, international record carriers, and interexchange carriers affiliated with independent telephone companies. It also extended its forbearance to specialized carriers and other carriers that previously had been subject to streamlined regulation.

[44]95 FCC 2d at 578.

In the Fifth Report and Order, the Commission extended its forbearance policy to domestic satellite carriers and to all the domestic, interstate, interexchange services of carriers affiliated with independent telephone companies.[45]

As the Commission's careful deliberations over a seven year period evidence, it deregulated non-dominant carriers gradually as it gained information about their market power and experience with their lack of capacity to engage in practices that violated Sections 201(b) and 202(a) of the Act. The Commission grounded its actions on empirical data, not predictions devoid of a factual foundation. Clearly, the phasing out of regulation has required careful consideration in the past, and the reform of the access charge regime should be treated no differently.

When the Commission finally did begin to deregulate the dominant carrier, AT&T, it first chose limited deregulation. The Commission streamlined certain tariff regulations for AT&T but did not eliminate entirely the regulation of the particular services. Recognizing that "the long distance marketplace is not perfectly competitive" but that "competition for most business services is sufficiently effective to permit the changes adopted," the Commission enacted

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[45]Finally, the Commission's Sixth Report and Order, sought to replace the Commission's permissive forbearance policy with a mandatory forbearance policy that would have compelled forborne carriers to cancel their tariffs. However, the U.S. Court of Appeals for the D.C. Circuit reversed the Commission, basing its decision not on flaws in the Commission's policy, but finding that the Communications Act did not give the agency the requisite authority.

reforms of the tariff process.[46] Moreover, it was only a short time prior to this final decision that the FCC deregulated AT&T by reclassifying it as a nondominant carrier.[47] Using the same rationale in the instant proceeding, the Commission cannot make the finding that "competition . . . is sufficiently effective to permit the changes adopted." In spite of this fact, the Commission suggests quickly implementing deregulation of access charges.

The Commission also took a step-by-step approach in other policies toward deregulation. For example, in its more recent effort to eliminate price cap rules for AT&T, the Commission removed commercial services from price cap regulation, yet retained existing regulation of analog private line services and 800 directory assistance services.[48] The Commission declined to deregulate these services across the board because there were insufficient competitive alternatives for users of analog private line services,[49] and 800 directory assistance service remained a monopoly.[50] Indeed, AT&T did not become fully deregulated until late 1996,

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[46] 6 FCC Rcd at 5881.

[47] Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1995).

[48] Revisions to Price Cap Rules for AT&T Corp., 10 FCC Rcd 3009 (1995).

[49] Id. at 3024.

[50] Id. at 3023.

when the Commission ruled that non-dominant interexchange carriers will no longer file tariffs for their interstate domestic long distance services.[51]

This careful approach to deregulation is also demonstrated in the Commission's transport rate structure proceeding.[52] In the initial order, the Commission stated its intention to promote competition in the interstate switched transport market and interexchange services and adopted the interim rate structure that is discussed in this proceeding. At that time, the Commission found that it must "proceed cautiously in this area in order to assume that [it does] not endanger the availability of a pluralistic supply in the interexchange market."[53]

Specifically, the FCC first removed restrictions on LEC transport pricing flexibility in stages by first allowing density zone pricing, and then volume and term discounts.[54] As with Special Access, zone pricing would be permitted when

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[51]Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, CC Docket No. 96-61, FCC 96-424, (released October 31, 1996). The Commission noted that its decision marks the end of the transformation of the regulatory regime governing interstate, domestic, interexchange services from one in which all interexchange carriers were subject to a broad range of pricing and other regulatory requirements to one that relies on market forces. *Id.* at ¶4.

[52]See Transport Rate Structure and Pricing, 7 FCC Rcd 7006 (1992), recon. 8 FCC Rcd 5370, recon. 8 FCC Rcd 6223 (1993), further recon. 10 FCC Rcd 3030 (1994), further recon. 10 FCC Rcd 12979 (1995).

[53]7 FCC Rcd at 7008.

[54]Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC 7374, 7424

expanded interconnection first became operational in a study area. The threshold for allowing zone pricing was the activation of one Switched Access cross connect by a collocator. The Commission permitted volume and term discounts only when either 100 DS1- equivalent cross-connects had been taken in the "zone 1" offices in the study area or an average of 25 DS1-equivalent cross-connects per zone 1 office had been taken.[55] By tying pricing flexibilities to the marketplace demonstration of competition, the Commission realized the importance of proceeding cautiously with measured steps during the initial stage of Switched Access competition.[56]

Further strengthening this notion was the FCC's requirement that the LECs file volume and term discount tariffs on 120 days notice instead of the normal 45 days notice so that parties would have additional time to comment on implementing discounts that satisfy the cost showing requirement for new services. The FCC emphasized in its Order that it would not hesitate to suspend the volume and term discount tariffs should they not be fully justified to the FCC's

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(1993).

[55]8 FCC Rcd at 7424.

[56]While TCG does not agree that the Commission selected the appropriate "trigger points" for transport pricing flexibility, this example demonstrates that the Commission did, at least, see the need for some relationship between competitive pressures and deregulation.

satisfaction.[57] The cautious approach taken by the Commission then is still merited today.

Moreover, when the Commission reformed transport rate structure and pricing, the LECs were given considerable time to reconfigure their network facilities to adjust to the new policies. In its First Report and Order on Transport Rate Structure and Pricing, the Commission gave LECs nine months to make necessary modifications to its billing and operating systems, and to file tariffs implementing the new rate schedule. Additionally, those tariffs could not become effective in less than the 90-day notice period. The new rate structure therefore, did not become fully effective earlier than November 1, 1993, over 12 months after the order was released.[58] TCG urges the Commission to give LECs the same consideration today as it did when it reformed transport rate structure and pricing and allow reasonable time for reconfiguration for network facilities.[59]

Consistent with the findings in these proceeding, TCG does not oppose the revisions of regulations that foster and support competition for those services in which competitive options are actually available. However, it would be

[57] 8 FCC Rcd at 7435.

[58] 7 FCC Rcd at 7047.

[59] Arguably since competitive LECs would need to adapt to even greater access charge reform in this proceeding, they should be allowed an even more reasonable time to reconfigure network facilities than was granted to them during the Commission's First Report and Order on Transport Rate Structure and Pricing.

inconsistent with the Commission's traditionally measured approach toward regulatory changes to deregulate access services in essentially one step or in a very short period of time without a finding of substantial competition. The Commission's radical "flash cut" proposal in this Notice conflicts with the measured approach to deregulation that was successful as a catalyst to the development of competition. TCG sees no basis for the Commission to depart from its established practice of awaiting for the actual development of competition before considering or implementing any deregulation of the incumbent monopoly.

B. THE COMMISSION'S PROPOSALS FOR DEREGULATION ARE FRONT-END LOADED AND LEAVE LITTLE OR NO OPPORTUNITY FOR THE DEVELOPMENT OF LOCAL COMPETITION.

The Commission proposes a plan to reduce price-cap ILEC regulation in two phases as competitive benchmarks are achieved. In Phase I, "Potential Competition" the Commission proposes to allow geographic deaveraging within a study area, volume and term discounts for access services, easier ability to offer new, innovative access services, and most significantly, contract tariffs and individual request for proposals (RFPs) if an ILEC can demonstrate that the potential competition standard has been met. The requirements for meeting the "potential competition" threshold are very low, generally mirroring the unbundling and equal access requirements set forth in the 1996 Act.[60] The only added

[60]Notice at ¶163.

requirement is the rapid provisioning of network elements consistent with significant demand levels.[61]

Under Phase II, the Commission proposes to eliminate price cap service categories within baskets; remove the ban on differential pricing for access among different classes of customers; remove rate structure rules for transport and local switching; and consolidate traffic-sensitive and trunking baskets.[62] To receive Phase II deregulation, an ILEC must show that there is a "demonstrated presence of competition" in the marketplace which will be measured on a service-by-service basis. Eligibility for Phase II deregulation hinges on an ILECs ability to prove that there is (1) a demonstrated presence of competition sufficient to end mandatory rate structure rules;[63] (2) a fully implemented, competitively neutral universal services support mechanism; and (3) credible and timely enforcement of pro-competitive rules.[64]

In analyzing Phase I, "Potential Competition" and the deregulatory framework associated with that level of competition, TCG has serious concerns that such an approach will irreparably harm the development of local competition.

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[61] Id.

[62] Notice at ¶201.

[63] The Commission proposes to use a market-presence test on a service-by-service basis.

[64] Notice at ¶202.

The Commission's proposed standard affords no new conditions on ILECs to meet the potential competition standard; the requirements already are imposed on ILECs under Section 251 of the 1996 Act.[65] Although the potential competition standard appears to offer the added requirement of "rapid provisioning of network elements", RBOCs already have taken the position that the offering of access to unbundled network elements constitutes provisioning of network elements. Ameritech, for example, has filed for interLATA entry in the state of Michigan claiming that its interconnection agreements would satisfy "provisioning" requirements.[66]

The reality, however, is quite different. For example, even where TCG has concluded arbitrations with Ameritech, such as in Michigan, the costs underlying the interim rates generally are still not based on forward looking costs studies, for no state has yet completed a review of properly performed cost studies.[67] Thus, TCG's arbitrated agreement in Michigan only provides for interim rates for interconnection and unbundled network elements. In Ameritech's 271 Application, Ameritech asserts that the interconnection agreement with TCG has been implemented. However, the fact is that TCG Detroit is interconnected with

[65]1996 Act §251(c).

[66]See Application by Ameritech Michigan Pursuant of Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-1, filed January 2, 1997 (271 Application).

[67]Oregon completed a TSLRIC study, but is revisiting the issue.